

DOCKET NO. LLI-CV 19-6021698-S

SUPERIOR COURT

THE W.L. GILBERT TRUST CORPORATION

JUDICIAL DISTRICT OF LITCHFIELD

V.

AT TORRINGTON

TOWN OF WINCHESTER

JUNE 18, 2019

ANSWER

1. Defendant has insufficient knowledge or information upon which to form a belief, and therefore leaves Plaintiff to its proof.
2. Denied. The Grantor in said deeds was not the Plaintiff.
3. The deeds speak for themselves.
4. Denied. The Defendant never discontinued the uses or abandoned the premises.
5. Denied.
6. Denied.
7. Denied.
8. The allegations are not a factual pleading and therefore Defendant cannot respond.

LAW OFFICES OF

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JURIS NO. 18142

### FIRST SPECIAL DEFENSE

The claims made by the Plaintiff are barred by the equitable doctrine of waiver.

### SECOND SPECIAL DEFENSE

The claims made by the Plaintiff are barred by the equitable doctrine of unclean hands.

### THIRD SPECIAL DEFENSE

A change of circumstance has rendered the reverter void.

### FOURTH SPECIAL DEFENSE

The Plaintiff's predecessor in title abandoned any rights contained in the reverter.

### COUNTERCLAIM

#### Factual Background

1. The Town of Winchester ("Town") is the record owner of property known as 15 Hinsdale Avenue, Winchester, Connecticut. The property consists of three parcels and is collectively known as Hinsdale School.
2. Hinsdale School consists of a school building, parking lot, playground and athletic fields.
3. The Hinsdale School has been serving Winchester students for decades.

4. On July 1, 2015 the State of Connecticut took control of the Winchester School system for reasons not pertinent to this lawsuit.

5. The State appointed a Receiver, dissolved the Town's Board of Education, and terminated any local control of the education system.

6. The Receiver, with no input from the Town, moved the children out of Hinsdale School and sent them to another school in Winchester. Although the Receiver removed the children, the building and grounds continued to be maintained, insured and secured by the Receiver. The playground and athletic fields continued to be used.

7. The Town never took any affirmative action to remove the children from Hinsdale School.

8. When the Receiver was terminated in August, 2017, and local control of education was returned to the Town, the Board of Education and Superintendent immediately began plans to open the Hinsdale School building and return the children to Hinsdale. These actions included:

- a. Hired CREC to do an assessment of the use of Hinsdale School;
- b. Explored and confirmed State grants for the renovation of Hinsdale School;
- c. Investigated and established cost estimates for the renovation of Hinsdale School;

d. Investigated all possible environmental abatements needed for the renovation of Hinsdale School;

e. Conducted numerous community meetings to explain the process of renovating Hinsdale School and obtaining community feedback;

f. Hired an architectural firm to inspect Hinsdale School and make recommendations and develop a plan for the renovation;

g. Hired a civil engineer to inspect Hinsdale School and make recommendations for the renovation;

h. Prepared a grant application for the State of Connecticut Department of Education for reimbursement for the cost of renovating the Hinsdale School; and

i. Scheduled a vote to bond the cost of the renovation of the Hinsdale School and conduct a Town referendum to approve the borrowing for the project. The referendum is scheduled for September, 2019.

9. The Town's middle school and high school students are currently educated at the Gilbert School. Since 1895 the Town's high school students have attended the Gilbert School.

10. In 2011 the Town agreed to also send the seventh and eighth grade students to The Gilbert School.

11. The Gilbert School is located at 200 Litchfield Avenue, Winchester. The property is owned by The William L. Gilbert Trust Corporation, the Plaintiff (Gilbert Trust) in this action.

12. The Gilbert School is operated by a separate corporation known as The W.L. Gilbert School Corporation (Gilbert School).

13. The Gilbert School is controlled by the Gilbert Trust. Five of the nine members of the Board of Directors of the Gilbert School are appointed by the Trust, namely: Ellen Marino, Holly Cassaday, Jennifer Marchand, Charles Seaback and Steven Sedlack.

14. The Trust has no use for the playgrounds and athletic fields at issue here. The Trust's sole purpose is to support the long-term objectives of the Gilbert School and to provide financial assistance in the form of enhancements, special projects, and capital improvements to the Gilbert School.

15. The only possible use for these fields would be for the benefit of the Gilbert School.

16. The Town, acting through its Board of Education, and the Gilbert School have a contractual relationship whereby the Gilbert School provides education to the

middle and high school students of the Town, and the Town pays the school a fixed tuition payment.

17. The contract terms have been negotiated a number of times over the years concerning programs, tuition and other related matters.

18. Upon the expiration of the latest contract, the Town and the Gilbert School have been unable to agree on a tuition amount and governance issues despite numerous negotiation sessions.

19. The enrollment for the Gilbert School has been declining in recent years and the Gilbert School has attempted to address the declining enrollment by recruiting foreign students and accepting Town of Winchester middle school students.

20. The Gilbert School has limited space for athletic fields and currently the Gilbert School's baseball, softball, boys and girls soccer teams, use fields owned by the Town approximately two miles away and the School's track team uses the track of a nearby school.

21. The Town has no contractual relationship with the Gilbert Trust.

**Count One: Interference with Business Expectancies**

22. The Plaintiff Trust knows of the contractual relationship and business expectancies between the Town, acting through its Board of Education, and the Gilbert School.

23. The Trust is intentionally interfering with said relationships to benefit the Gilbert School in that:

- a. They have brought this lawsuit as leverage during budget negotiations between the Town and the Gilbert School for the purpose of benefiting the Gilbert School and harming the Town.
- b. They have brought this lawsuit for the purpose of impacting the Town's vote at a bonding referendum for Hinsdale School. A negative vote on bonding would cause Hinsdale School to remain shuttered and thus ensure Gilbert School retains the Town's middle school students who otherwise would return to the Town school system, thus benefiting the Gilbert School financially and harming the Town.
- c. This action, if successful, would allow the athletic fields to be stripped from Hinsdale School and allow the Gilbert School to use the fields to the exclusion of Winchester grade school students thus benefitting the Gilbert School and harming the Town.

d. This action, if successful, would allow the playground and athletic fields to be used exclusively by the Gilbert School to assist in an expansion plan to house foreign students, to the exclusion of the children of Winchester, thus benefitting the Gilbert School and harming the Town.

24. These actions are done to interfere with the contractual and business relations and expectancies between the Town and the Gilbert School for the benefit of the Gilbert School.

25. Such interference with the Town's contractual and business relationship and expectancies with the Gilbert School is intentional and without justification.

**COUNT TWO: Abuse of Process.**

1-25. Paragraphs 1 through 25 of the Count One are hereby made paragraphs 1 through 25 of Count Two as if more fully set forth herein.

26. The demand for the subject parcels and the bringing of this lawsuit constitute an abuse of process.

27. The benefit the Gilbert Trust seeks to bestow on the Gilbert School, not a party to this lawsuit, constitutes a use of the legal process in an improper manner and to accomplish the purposes outlined above that the legal process is not designed for.



**COUNT THREE: Slander of Title.**

1-25. Paragraphs 1 through 25 of the Count One are hereby made paragraphs 1 through 25 of Count Three as if more fully set forth herein.

26. The bringing of this complaint concerning the subject parcels, with no factual basis, constitutes a slander on the Town of Winchester's title to the subject parcel.

27. Said actions constitute a slander of title, and were done with malice knowing the Town would be damaged financially when it seeks financing for the renovation of the Hinsdale School.

WHEREFORE, the Defendant claims:

1. Monetary Damages.
2. Any other relief as the Court may deem equitable.

DEFENDANT

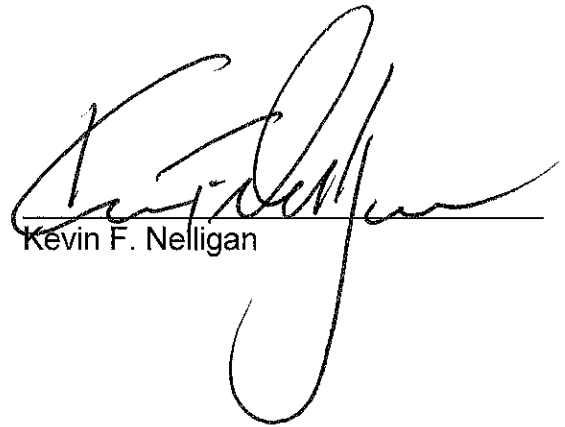
By

  
Kevin F. Nelligan  
It's Attorney

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent to all counsel and pro se parties of record via mail or email as set forth below on June 18, 2019 to:

J. Michael Sconyers, Esq.  
Ackerly Brown, LLP  
PO Box 815  
Bantam, CT 06750



Kevin F. Nelligan